INVESTMENTS · 14 EXITS

EXIT

Colbalt Networks
1999 IPO

EXIT

Danger
Acquired by Microsoft

EXIT

eFusion
Acquired

EXIT

Envivio
Acquired

EXIT

Four11
Acquired by Yahoo

EXIT

Intershop
1998 IPO

EXIT

Jabber
Acquired by Cisco

EXIT

Kxen
Acquired

EXIT

Mobile Complete
Acquired

EXIT

OpenTable
2014 IPO

EXIT

Preview Systems
1999 IPO

EXIT

Sandpiper Networks
Acquired by Digital Island

EXIT

Tumbleweed Communications
Acquired by Axway

EXIT

Xtime
Acquired for $325M

LSG ADVISORS
1221 Avenue of the Americas
8th Floor
New York, NY 10020

LSG ADVISORS

JOHN S. SHELDON
Managing Director
Tel: 212-278-5414
Fax: 212-278-5388

December 29, 1995

Ms. Marie M. Mookini
Director of MBA Admissions
MBA Admissions Office
Stanford University Graduate School of Business
350 Memorial Way
Stanford, CA 94305-5015

Dear Ms. Mookini,

It is with great enthusiasm that I recommend Deepak Moorjani for the Stanford University MBA program. In my seven years at The Lodestar Group/LSG Advisors and my eight years at Goldman Sachs, I have had the pleasure of working with many exceptional bankers. Of all the MBA candidates for whom I have chosen to write recommendations, Deepak stands among the top candidates in terms of the skills he has developed and the contributions I believe he will make to your MBA program. This letter is designed to provide my reactions to questions number 1 through 6 on the enclosed application. I would be happy to amplify further on anything contained herein.

Deepak's greatest strengths are a combination of highly developed financial, technical and strategic analytical skills and his well developed judgment regarding when and how to apply such skills. I often find Deepak helping me reformulate my views regarding what truly is "the question" or "the problem" or the "real situation". Deepak is surprisingly mature in reading a situation and determining what are the critical issues. In short, Deepak has an impressively unique combination of raw analytical capability with a very thoughtful perspective of considering most of the relevant points of view on the situation at hand. This perspective is unparalleled by most young businessmen his age.

Deepak's weakness are few, and I believe he is well aware of them. Not surprisingly Deepak has somewhat limited patience with individuals who struggle with the complexities of multidimensional analytical challenges. On the other hand, I have observed Deepak train some of our younger bankers and he has shown a real capability to explain and teach concepts to others. Another weakness is one from which many highly successful bankers at Deepak's level suffer. Deepak, like others, struggles with the transition from conceptual analysis and the action plan such analysis implies to the commercial realities of a business context and having to motivate disparate parties to accept the appropriate solution.

In addition to Deepak's raw analytical abilities, I have always found his work to be very precise and consistent with a high degree of attention to detail. For a banker at his stage of development, Deepak is very concise in forming both his written and spoken word. At our firm,

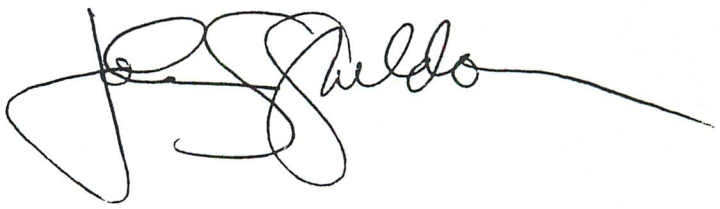
Deepak has shown incredible initiative in identifying technology, broadly defined, as a field on which to focus with an objective of developing banking opportunities. In this regard I am quite impressed with the thoughtfulness of Deepak's approach, the knowledge of technology that he has assimilated and his ability to choose discreet, specific potential transactions on which to focus. I believe that it is highly likely that a particular foray of Deepak's will result in our firm being engaged by a major U.S. technology firm, a very rare accomplishment for a banker at Deepak's stage of development.

Deepak has demonstrated very effective interpersonal skills with both senior bankers and subordinates. He is very facile in shifting from the contributions required of a subordinate to providing the necessary leadership to colleagues working with and for him. At times Deepak has not been as consistent in applying his interpersonal skills as he is capable of but what is more important is his sincere willingness to address this situation.

Given the nature of our firm, it is rare for a young banker to have the opportunity to truly show his leadership skills. However, I have noticed that Deepak is very capable at training young bankers and is also highly effective in dealing on his own with clients, other bankers or lawyers in situations when left on his own. Deepak is very capable at generating appropriately deserved respect from others who are usually older and much more experienced.

In choosing and considering any other elements that may impact Deepak's candidacy, I believe that this letter covers most of the relevant descriptive information. However, as a final thought, I strongly believe that Deepak is a very unique candidate for your program. It has been a long time since I have recommended a candidate with as interesting a mix of innate intelligence, analytical judgment, commercial focus, entrepreneurialism and tenacity. I have no reservations whatsoever that Deepak will make many significant contributions to your MBA program that materially distinguish him from other candidates.

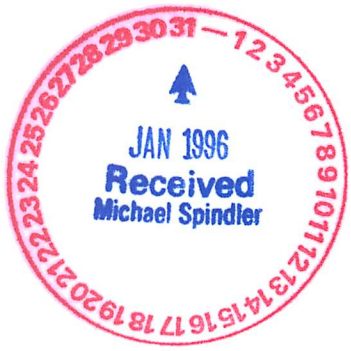
Sincerely,



STORAGE

Bain & Company

Bain & Company, Inc.
One Embarcadero Center
San Francisco, California 94111–3722
USA
TEL 415–434–1022
FAX 415–627–1033



January 23, 1996

Mr. Michael H. Spindler
Chief Executive Officer and President
Apple Computer, Inc.
1 Infinite Loop
Cupertino, CA 95014

Dear Mr. Spindler:

On behalf of Bain & Company, I am pleased to present you with a copy of ***Maximum Leadership***, a new book written by my colleagues Charles Farkas and Philippe De Backer.

Throughout our 23 years as an international strategy consulting firm, Bain & Company has dedicated itself to helping chief executives create sustainable value for their companies. Based on this experience, as well as on original research including extensive interviews of over 150 CEOs from around the world, ***Maximum Leadership*** presents five distinct approaches to Chief Executive leadership. The findings have generated interest from executives and media alike, including a feature article in ***Fortune*** magazine's early January issue.

Given your position of leadership, I thought you would find this work thought provoking, as you discover which leadership approach you tend to use. We would be interested in your reactions as part of our on-going study of corporate leadership and the role of the center.

Sincerely,

Vincent H. Tobkin
Director

Enclosure

Genesis Ventures Reference List

Deepak Moorjani		
Mr. Robert Pirie Vice Chairman SG Cowen 1221 6th Avenue New York, NY 10020 212-278-5413	Matt Judson Managing Director BankBoston Robertson Stephens 100 Federal Street Boston, MA 02110 617-434-8023 mjudson@bkb.com	Dr. Douglas Solomon President, Business Development Interval Research Corporation 1801 Page Mill Rd, Bldg 3 Palo Alto, CA 94304 650-842-6365 solomon@interval.com
Aymerik Renard		
Ajit Pendse President & CEO eFusion 14600 NW Greenbrier Pkwy Beaverton, OR 97006 503-207-6450 ajitp@efusion.com	Philippe Cases Partner Partech International 50 California Street San Francisco, CA 94111 415-788-2929 phcases@partechintl.com	Vincent Pluvinage President & CEO Preview Systems 1601 South De Anza Cupertino, CA 95014 408-873-3450 vincent@previewsystems.com
Michael Spindler		
George Fisher Chairman & CEO Eastman Kodak Company 343 State Street Rochester, NY 14650 716-724-4000	Regis McKenna Chairman The McKenna Group 1755 Embarcadero Road Palo Alto, CA 94303 650-354-4400	Dr. Thomas Middelhoff Chief Executive Officer Bertelsmann AG Carl-Bertelsmann Str. 285 D-33311 Gütersloh Germany 49-5241-803666

Genesis Ventures Reference List

Deepak Moorjani		
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Aymerik Renard		
Ajit Pendse President & CEO eFusion 14600 NW Greenbrier Pkwy Beaverton, OR 97006 503-207-6450	Philippe Cases Partner Partech International 50 California Street San Francisco, CA 94111 415-788-2929	Vincent Pluvinage President & CEO Preview Systems 1601 South De Anza Cupertino, CA 95014 408-873-3450
Michael Spindler		
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Genesis Ventures Reference List

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Dr. Thomas Middelhoff
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49-5241-803666

Moran, Theresa G.

From: Moran, Theresa G.
Sent: Monday, November 08, 1999 11:57 AM
To: 'pearlman@tbglp.com'; 'bpackard@texpac.com'; 'jchang@texpac.com'; 'a.caffi@ventech.fr'; 'olivier.a.dupont@socgen.com'; 'Francois.Roux@socgen.com'; 'Marie-Laure.Faller@socgen.com'; 'johndegen@sumitomo.co.jp'; 'tadyuki.ueno@sumitomo.co.jp'
Cc: Moorjani, Deepak; 'Aymerik@innovacomvc.com'; Vignos, Gregg F.
Subject: Upstart Capital, L.P.

Importance: High

Dear Sirs and Madams;

Please find attached the Subscription Agreement and Partnership Agreement for Upstart Capital, L.P. The Initial Closing is set for Monday November 22, 1999.

If you have any questions please call me at (415) 983-1122 or Deepak Moorjani at (650) 520-7251.


Partnership10046465_2.DOC


Subscription10046482_2.DOC

Very Truly Yours,

Theresa Guy Moran

(415) 983-1122
(415) 983-1200 facsimile
moran_tg@pillsburylaw.com

cc: Francois Messager
Union Europeene de CIC Finance
4 rue Gaillon
75107 Paris Cedex 02
France

Pillsbury

Madison & Sutro LLP

ATTORNEYS AT LAW
235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104
MAILING ADDRESS: P. O. BOX 7880
SAN FRANCISCO, CA 94120-7880
TELEPHONE: (415) 983-1000 FAX: (415) 983-1200
Internet: pillsburylaw.com

Writer's direct dial number / email:
(415) 983-1122
moran_tg@pillsburylaw.com

November 8, 1999

VIA FEDERAL EXPRESS

Alain Caffi
General Manager
Natexis Ventech
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Olivier Dupont
Deputy Head of Private Equity
Societe Generale
ADVI / PAR
Tour Societe Generale, 17 cours Valmy
92972 Paris - La Defense Cedex
FRANCE

Francois Messager
Directeur
Union Europeene de CIC Finance
4 rue Gaillon
75107 Paris Cedex 02
FRANCE

Re: *Upstart Capital, L.P.*

Gentlemen:

For your convenience I am enclosing copies of the Subscription Booklet for Partnership Interests and Limited Partnership Agreement for Upstart Capital, L.P., together with accompanying email dated November 8, 1999, directed to all of you. I look forward to your comments and questions should there be any.

Very truly yours,

Theresa Guy Moran

Enclosures

cc: Deepak Moorjani
Gregg F. Vignos

The [redacted] Group

MEMORANDUM

TO: Deepak Moorjani

FROM: Bret Pearlman

RE: Fund Documents

DATE: November 29, 1999

As we discussed, I have attached an overview of the Fund's provisions which we thought merited some discussion. Our attorney, Bob Pelgrift of Simpson Thacher & Bartlett can be reached at (212) 455-3565.

Thank you.

- The 2.5% management fee is equal to the highest fee payable by Blackstone to the other funds. Moreover, it is combined with only an 80% offset for fees received from portfolio companies and an ambiguous and otherwise questionable provision for the allocation of expenses between the GP and the Fund. As indicated the PA provides that the GP will pay from the management fee only the administrative expenses of the GP and its affiliates and equity holders, while charging the Fund for routine operating expenses for the Fund . . . and "other expenses" determined by it to be consistent with other expenses payable by the Fund. It is unclear how the distinction is to be made and how the expense provision can be justified in light of the high management fee. The cap on organizational expenses ($750,000) to be charged to the Fund is about twice that of the other Blackstone funds (including much larger funds).

- There does not appear to be any GP clawback provision (although the PPM and any ancillary documents that we may not have seen, should be examined to confirm this).

- The limitations on conflicts of interest are eviscerated by provisions that allow the GP Group to engage in any activities on behalf of their clients and themselves, regardless of any conflict of interest and that relieve the GP Group from the duty to act for the benefit of the Fund because of duties owed to third parties in connection with the GP Group's outside activities.

- It is not customary to provide that the Fund's participation may be on terms different from those granted to the GP and its owners in the GP's discretion to grant co-investment rights.

- The absence of any limitation on successor funds is not typical.

- The provision requiring the LPs to pay the management fee directly to the GP is unusual. (Certain language in the PA suggests that the GP may pay these fees on behalf of the LPs form their capital contributions (see PA § 6.8 (c)(i), p. 32), but this needs to be clarified.

UPSTART*capital*

December 10, 1999

INNOVACOM SA
23 Rue Royale
75008 Paris, France

Attn: Mr. Denis Champenois

This letter is intended to define the working relationship between Innovacom SA ("Innovacom") and Upstart Capital, LP ("Upstart") as it relates to the time and responsibilities of Aymerik Renard. It is understood that Upstart is being formed to consummate private equity investments in the Internet and telecommunications space with a primary focus on seed and early-stage venture capital investments. The parties recognize and acknowledge that Innovacom and Upstart have uniquely complementary activities and a strong partnership.

To further the partnership between the parties, Upstart and Innovacom agree that Mr. Renard shall serve as a Partner of Upstart Capital and will assume the full rights and responsibilities that such role entails. As a Partner, Mr. Renard shall have one of three votes on Upstart's Investment Committee. For all new investment opportunities prospected by Mr. Renard and/or other members of Upstart, Upstart will have the right of first refusal to such investments. It is understood that Upstart seeks to serve as a lead investor when and where possible and will make its best effort to include Innovacom as a co-investor when and where appropriate, such co-investment to be at the sole discretion of Innovacom.. In addition, Innovacom shall use its best efforts to aid Upstart with respect to fund-raising among Innovacom's network of contacts and partners.

The parties acknowledge that Mr. Renard will also remain as Innovacom's US Investment Manager, and it is understood that he will spend sufficient time necessary to fulfill his Innovacom duties, including current investment monitoring. Innovacom shall, from time to time, be presented with co-investment opportunities from other venture capital firms, and Upstart recognizes that its participation may or may not be possible in these situations. However, Mr. Renard shall use his best efforts to include Upstart in these opportunities when and where possible.

Upstart agrees to pay Mr. Renard's portion of Upstart Capital's management fee to Mr. Renard via a contract to be executed between Upstart and France Telecom North America, Mr. Renard's official employer in the United States. It is understood that Mr. Renard will be the sole beneficiary of any and all such payments, and to the extent that the aforementioned statement is not true, then Upstart shall have the right, in its sole discretion, to withhold such payment. Upstart understands that Mr. Renard and Innovacom have an agreement whereby Innovacom will receive two points of Mr. Renard's three points of carried interest in Upstart.

Very truly yours,

UPSTART CAPITAL, L.P.

By: _____
Title: _____

AGREED TO THIS ____ DAY
OF DECEMBER 1999

INNOVACOM SA
.
By: _____
Title: _____

Pillsbury

Madison &
Sutro LLP

FACSIMILE TRANSMITTAL COVER SHEET

235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104
MAILING ADDRESS: P. O. BOX 7880
SAN FRANCISCO, CA 94120-7880
TELEPHONE: (415) 983-1000 FAX: (415) 983-1200

DATE: December 29, 1999	MUST BE SENT BY:	# PAGES W/COVER: 26	
TO: Aymerik Renard	COMPANY:	FAX NO: (650) 875-1505	PHONE NO:
FROM: John M. Dick	C/M #: 89138 000 0001	USER #: 12983	PHONE NO: (415) 983-1527

IF YOU HAVE NOT PROPERLY RECEIVED THIS FAX, PLEASE CALL (415) 983-1000. THANK YOU

MESSAGE:

Please see attached.

Operator: _____ Time Sent: _____ Batch ID: _____

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ONE LIBERTY PLAZA
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(212) 225-2000

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From	Matthew K. Behrent	**Date**	December 29, 1999
Sender's direct dial	212-225-2784	**For retransmission**	(212) 225-3545
Sender's fax	212-225-3999	**Total pages Sent**	[redacted] 25 Pages
To	**At**	**Fax**	**Phone**
John Dick	Pillsbury Madison & Sutro	415-477-4722	415-983-1649

Call me or Dan Kolb (212-225-2786) w/ questions

cc Gross Vignos @ 925.254.9648

[New York #710607 v1]

Sender's ID: 03430

Our ref. # 28478-138

Rider 18A

For Capital Account purposes, all items of income, gain, loss and deduction shall be allocated among the Partners in a manner such that if the Partnership were dissolved, its affairs wound up and its assets distributed to the Partners in accordance with their respective Capital Account balances immediately after making such allocation, such distributions would, as nearly as possible, be equal to the distributions that would be made pursuant to Section 5.1. For purposes of making allocations pursuant to this Section 4.1(a) prior to the dissolution of the Partnership, the assets held by the Partnership on any date (as to which a disposition has not occurred as of such date) shall be deemed to have a value equal to their basis for Capital Account purposes.

Rider 20A

For federal, state and local income tax purposes, items of income, gain, loss, deduction and credit shall be allocated to the Partners in accordance with the allocations of the corresponding items for Capital Account purposes under this paragraph 4.1(e), except that items with respect to which there is a difference between tax and book basis will be allocated in accordance with Section 704(c) of the Code, the Treasury Regulations thereunder, and Treasury Regulations Section 1.704-1(b)(4)(i).

and (ii) the voluntary or involuntary withdrawal, retirement or termination of either of Aymeric Renard or Michael Spindler as members of the General Partner or the death or Permanent Incapacity of either of them, unless, in the case of this clause (ii), a Majority-In-Interest of the Limited Partners elects to continue the Commitment Period

~~4.1(a)(ii)(C)(2).~~ References in this Agreement to "the aggregate Carried Interest Distributions" shall mean the aggregate of all Carried Interest Distributions made to the General Partner throughout the term of the Partnership.

Cause shall mean any one or more of the following: (i) an action taken by the General Partner or a managing member of the General Partner in bad faith against the Partnership or the Limited Partners (in their capacity as such); (ii) gross negligence or willful misconduct by the General Partner constituting a material breach of a material obligation under this Agreement that is not substantially cured within ~~(one hundred eighty (180))~~ **[ninety (90)]** days after receipt of notice thereof from a Majority-In-Interest of the Limited Partners; (iii) conviction of a felony by the General Partner or a managing member of the General Partner; or (iv) a material violation of federal or state securities law in conducting the business of the Partnership. For purposes of the preceding sentence: (x) the General Partner or a managing member of the General Partner that consults with legal counsel or a certified public accountant that is independent with respect to the Partnership and such managing member of the General Partner in respect of Partnership affairs shall be deemed to have acted in good faith and without negligence with regard to any action or inaction that is taken in accordance with the advice or opinion of such advisor so long as such advisor was selected with reasonable care; and (y) the General Partner's or a managing member of the General Partner's reliance upon the truth and accuracy of any written statement, representation or warranty of a Partner shall be deemed to have been reasonable and in good faith absent such General Partner's or managing member of the General Partner's actual knowledge that such statement, representation or warranty was not, in fact, true and accurate.

in good faith

written

Close of Business shall mean 5:00 p.m., local time, in San Francisco, California.

Code shall mean the United States Internal Revenue Code of 1986, as amended.

the earlier of (i)

Commitment Period shall mean the period of time that commences at the time of the Initial Closing and continues until the Close of Business on the date that is five (5) years after the ~~Final~~ Initial Closing.

Defaulting Limited Partner shall have the meaning set forth in **Section 3.4(a)**.

Derivative Partnership Interest shall mean any actual, notional or constructive interest in, or right in respect of, the Partnership (other than a Partner's total interest in the capital, profits and management of the Partnership) that, under Treasury Regulation Section 1.7704-1(a)(2), is treated as an interest in the Partnership for purposes of Section 7704 of the Code. Pursuant to the foregoing, "Derivative Partnership Interest" shall include any financial instrument that is treated as debt for Federal income tax purposes and (i) is convertible into or exchangeable for an interest in the capital or profits of the Partnership or (ii) provides for one or more payments of equivalent value.

Dissolution shall mean, with respect to a legal entity other than a natural person, that such entity has "dissolved" within the meaning of the partnership, corporation, limited liability company, trust or other statute under which such entity was organized.

18 Percent Limitation shall have the meaning set forth in **Section 6.20(b)(i)**.

(ii) certificates or other evidences of deposit in the Bank or any other commercial bank, (iii) money market or similar mutual fund interests, and (iv) other highly liquid investments providing for appropriate safety of principal (as determined by the General Partner in its reasonable discretion).

Indemnified Person shall mean: (i) the General Partner, the Liquidating Partner, and the Management Company; (ii) each equityholder, member, director, officer, employee, or agent of a Person described in the preceding clause (i); and (iii) each member of the LP Advisory Committee. In addition, "Indemnified Person" shall mean any employee, independent contractor, or agent of the Partnership to the extent determined by the General Partner in its reasonable discretion. A Person that has ceased to hold a position that previously qualified such Person as an Indemnified Person shall be deemed to continue as an Indemnified Person with regard to all matters arising or attributable to the period during which such Person held such position.

Individual Limited Partners shall mean any individual, excluding members of the General Partner, admitted to the Partnership by the General Partner (i) as a Limited Partner or Additional Limited Partner pursuant to **Section 3** or (ii) as a Substitute Limited Partner pursuant to **Section 7**, but in each case only if such individual has not become a Withdrawn Limited Partner.

Initial Closing shall mean the first closing at which a Limited Partner is admitted to the Partnership pursuant to **Section 3.1(b)**.

Investment Company Act shall mean the United States Investment Company Act of 1940, as amended, including the rules and regulations promulgated thereunder.

Late Admission Charge shall have the meaning set forth in **Section 3.2(b)(i)**.

Limited Partner shall mean any Person ~~excluding individual members of the General Partner~~ admitted to the Partnership by the General Partner (i) as a Limited Partner or Additional Limited Partner pursuant to **Section 3** or (ii) as a Substitute Limited Partner pursuant to **Section 7**, but in each case only if such Person has not become a Withdrawn Limited Partner. A Limited Partner shall not cease to be a Limited Partner or lose its non-economic rights in respect of the Partnership solely by virtue of having transferred to one or more Persons its entire economic interest in the Partnership. Except where the context requires otherwise, a reference in this Agreement to "the Limited Partners" shall mean all of the Limited Partners (taken together or acting unanimously, as appropriate).

Liquidating Partner shall mean the General Partner unless another Person is selected to serve as Liquidating Partner pursuant to **Section 8.2**.

Liquidating Trust shall have the meaning set forth in ~~{Section 8.4(a)}~~ **[Section 8.5(a)]**.

LP Advisory Committee shall have the meaning set forth in **Section 6.14(a)**.

Majority-Interest of the Limited Partners shall mean a group of Limited Partners whose aggregate Capital Contributions at the time of determination exceed ~~fifty percent (50%) of the total~~ Capital Contributions of all the Limited Partners, at such time. (excluding the General Partner, any of its members or their Affiliates)

Compared 10046465.3/10185250.1

Non-Voting Interest shall have the meaning set forth in **Section 6.19(c)**.

Other Funds shall mean any other investment funds in which the General Partner or any of its members or Affiliates plays a principal investment management role.

Parallel Funds shall have the meaning set forth in **Section 6.21(a)**.

Partner shall mean any General Partner or Limited Partner, as the context shall require. Except where the context requires otherwise, a reference in this Agreement to "the Partners" shall mean all of the Partners (taken together or acting unanimously, as appropriate).

Partnership shall mean Upstart Capital, L.P., a Delaware limited partnership.

Partnership Expenses shall have the meaning set forth in **Section 6.7(a)**.

"_____" percent (___ %) in interest of the Partners or Limited Partners shall mean a group of Partners or Limited Partners whose aggregate Capital Contributions at the time of determination equal or exceed the indicated percentage of the total Capital Contributions of all the Partners or Limited Partners, as applicable, at such time.

Permanent Incapacity shall mean the Person's mental or physical incapacity such that they are unable to perform their usual professional activities, as reasonably determined by the General Partner in its sole discretion, for more than ~~{one hundred eighty (180)}~~ **[ninety (90)]** consecutive days.

Permitted Interests shall have the meaning set forth in **Section 6.19(d)**.

Person shall mean an individual, partnership, corporation, limited liability company, unincorporated organization, trust, joint venture, governmental agency, or other entity, whether domestic or foreign.

Portfolio Company shall mean any corporation or other business entity that is an issuer of Securities (other than Idle Funds Investments) held by the Partnership.

Portfolio Securities shall mean Securities (including non-publicly traded Securities and promissory notes, but not including Idle Funds Investments) issued by Portfolio Companies and held by the Partnership.

Principal Office shall have the meaning set forth in **Section 2.4**.

Private Foundation Limited Partner shall mean any Limited Partner that qualifies as a "private foundation" within the meaning of Section 509 of the Code.

Profits and Losses shall mean, for any period, the Partnership's items of income and gain as well as loss, expense and deduction as determined under GAAP; provided, however, that Profits and Losses as computed for each allocation period under **Section 4** shall be determined by taking into account all unrealized gains and losses in respect of Portfolio Securities attributable to such allocation period (for purposes of determining such unrealized gains and losses, as well as any

Tax Matters Partner shall have the meaning set forth in **Section 6.9(a)**.

Tax Percentage shall have the meaning set forth in **Section 5.1(a)(ii)**.

Term shall have the meaning set forth in **Section 2.2**. Where not capitalized, "term" shall mean the entire period of the Partnership's existence, including any period of winding-up and liquidation following the Dissolution of the Partnership pursuant to **Section 8.1**.

Terminate or Termination shall mean, with respect to a legal entity other than a natural person, to cause such entity to be dissolved, complete its process of winding-up and liquidation, and otherwise cease to exist.

Transfer shall mean any sale, exchange, transfer, gift, encumbrance, assignment, pledge, mortgage, hypothecation or other disposition, whether voluntary or involuntary.

Treasury Regulations shall mean a regulation issued by the United States Department of the Treasury and relating to a matter arising under the Code.

Two-Thirds-Interest of the Limited Partners shall mean a group of Limited Partners whose aggregate Capital Contributions at the time of determination equal or exceed two-thirds of the total Capital Contributions of all the Limited Partners, at such time. (other than the General Partner, any of its members or their Affiliates)

United States shall mean the United States of America.

Unreturned Capital Contribution shall mean, for each Partner, the excess, if any, of such Partner's Capital Contribution over the aggregate distributions made to such Partner pursuant to this Agreement. For purposes of the preceding sentence, distributed property shall be valued at Fair Market Value (determined as of the time of distribution and net of liabilities secured by such property that the Partner assumes or to which the Partner's ownership of the property is subject).

Updated Capital Account shall mean, with respect to a Partner, such Partner's Capital Account determined as if, immediately prior to the time of determination, all of the Partnership's assets had been valued pursuant to **Section 6.11** and any previously unallocated Profits or Losses had been allocated pursuant to **Section 4**.

Valuation Committee shall have the meaning set forth in **Section 6.11(g)**.

Valuation Partner shall have the meaning set forth in **Section 6.11(a)**.

Withdrawal Event shall have the meaning set forth in **Section 7.4(a)**.

Withdrawn Limited Partner shall have the meaning set forth in **Section 7.4(a)**.

1.2 *General Usage.* The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Except where the context clearly requires to the contrary: (i) each reference in this Agreement to a designated "Section," "Schedule," "Exhibit," or "Appendix" is to the corresponding Section, Schedule, Exhibit, or Appendix of or to this Agreement; (ii) instances of gender or entity-specific usage (*e.g.*, "his",

(b) Each Partner hereby grants to the General Partner a special power of attorney (with full rights of assignment) irrevocably appointing the General Partner as the granting Partner's attorney-in-fact with power and authority to execute or acknowledge, in the granting Partner's name and on its behalf, any document described in **Section 2.7(a)**, provided, however, that such special power of attorney shall not extend to any document (other than any document described in **Section 2.7(a)** or **2.7(b)** that is required to be executed and/or acknowledged by applicable law) which alone or taken together with other related documents may have an adverse effect on a Majority-In-Interest of the Limited Partners. Each special power of attorney granted under this **Section 2.7(b)** is coupled with an interest and shall not be revoked by the bankruptcy, death, disability or other event of legal incapacity of the granting Partner**[, but shall be automatically revoked at such time as the General Partner ceases for any reason to be the general partner of the Partnership]**.

2.8 *Title to Property.* Title to all Partnership property shall be held in the name of the Partnership; provided, however, that publicly traded Securities and Idle Funds Investments may be held in "street name" or through a similar arrangement with a reputable financial institution.

SECTION 3

CAPITALIZATION

3.1 *Capital Commitments; Admission of Partners.*

(a) *Capital Commitments.* Each Limited Partner, upon admission to the Partnership, shall be deemed to have made a "Capital Commitment" equal to the amount specified as such in the Subscription Agreement relating to such Limited Partner. The Capital Commitment of each Partner shall be set forth on **Schedule A**. The Capital Commitment of the General Partner shall be equal to at least two and one-half percent (2.5%) of the total Capital Commitments of the Partners. Except as specifically provided in this Agreement, the Capital Commitment of a Partner: (i) shall represent the maximum aggregate amount of cash and property that such Partner shall be required to contribute to the capital of the Partnership in regards to such Partner's Capital Commitment; and (ii) shall not be changed during the term of the Partnership. A Capital Account shall be established and maintained for each Partner in accordance with the rules of Section 704(b) of the Code and the Treasury Regulations thereunder.

(b) *Admission of Partners.* The General Partner may hold an Initial Closing of the Partnership and commence admitting Limited Partners upon its acceptance and approval of Subscription Agreements representing aggregate Capital Commitments of not less than twenty million dollars ($20,000,000). Thereafter, the General Partner may, in its exclusive discretion, admit Additional Limited Partners or accept increases in the Capital Commitments of existing Limited Partners, on the same terms as applied at the Initial Closing (subject to **Section 3.2(b)** and **Section 4.1(d)**), at one or more additional closings held not later than the Close of Business on the date that is twelve (12) months after the Initial Closing. Notwithstanding the foregoing provisions of this **Section 3.1(b)**, in no event shall the aggregate Capital Commitments of the Limited Partners exceed seventy-five million dollars ($75,000,000) without approval by Two-Thirds-Interest of the Limited Partners.

will we satisfy this?

(plus the capital commitments made with respect to Parallel Funds)

3.2 *Capital Contributions[.]*. ~~(.)~~ Except to the extent provided in **Section 3.8** or **Section 8.3**, all capital contributions shall be in cash~~[; provided, however, that the General Partner may (fund up to fifty percent (50%) of its Capital Commitment with a full recourse promissory note and may)]~~; permit up to one percent (1%) of the aggregate Capital Commitments to be funded with a full recourse promissory note by certain individuals, consultants and advisors (excluding members of the General Partner)~~. The obligation of a Partner to satisfy its Capital Commitment shall be without interest (other than in the case of default as provided in **Section 3.4** or late admissions as provided in **Section 3.2(b)**).

(a) *Capital Contributions by Limited Partners.*

(i) Capital contributions, in proportion to and in respect of the Limited Partners' Capital Commitments, shall be due and payable, upon not less than ten (10) days prior notice, at such times and in such amounts as shall be specified in one or more capital calls issued by the General Partner.

(ii) Capital contributions from ERISA Limited Partners, excluding any Partnership Expenses and Management Fee, shall not be due and payable to the Partnership until the date of closing of the Partnership's first purchase of Portfolio Securities; provided, however, that the ERISA Limited Partners shall pay any Partnership Expenses and Management Fee directly to the General Partner pursuant to **Section 6.7(b)**.

(iii) Following the ~~[Close of Business on the date that is five (5) years from the Final Closing of the Partnership]~~ **[end of the Commitment Period]**, the General Partner shall not issue capital calls for the purpose of enabling the Partnership to make new investments in Portfolio Securities; provided, however, that the General Partner shall not be prohibited from issuing capital calls pursuant to this **Section 3.2(a)(iii)** for the purpose of enabling the Partnership to: (x) make follow-on investments in existing Portfolio Companies **[up to an aggregate amount of twenty percent (20%) of Capital Commitments for up to two (2) years from the end of the Commitment Period]**, or (y) pay Partnership Expenses including the Management Fee or ~~[(z) complete]~~**[(z) for six (6) months after the Commitment Period complete]** investments by the Partnership in transactions which were ~~[in the process of being completed]~~ **[the subject of binding definitive purchase agreements** prior to the Close of Business on the date that is the end of the Commitment Period.

("follow-on investments")

(b) *Late Admissions; Increases in Capital Commitments.*

(i) Subject to **Section 3.2(b)(ii)**, in the event an Additional Limited Partner is admitted to the Partnership after the Initial Closing, such Additional Limited Partner shall, at the time of its admission to the Partnership, pay to the Partnership: (a) as a capital contribution, an amount equal to the aggregate capital contributions that would have been due to the Partnership from such Additional Limited Partner pursuant to **Section 3.2(a)** if such Additional Limited Partner had been admitted at the Initial Closing; plus (b) as a "Late Admission Charge" (and not as a capital contribution) and in addition to its Capital Commitment: (x) ~~a proportionate share of the cost of any Portfolio Securities~~ **[plus any increase]**~~[or minus any decrease]~~ **in the value of such Portfolio Securities** ~~based upon~~

(proportionate share of the)

(as determined in good faith by the General Partner)

~~an Independent Valuation event by any Portfolio Company, such as another round of financing, merger or sale of substantially all of its assets at a different valuation than the Partnership's purchase~~, Partnership Expenses and Management Fee paid by the Limited Partners prior to the admission of such Additional Limited Partner, plus an amount equal to (y) interest on the amount contributed pursuant to the preceding ~~[clause (x) and]~~ **[clause (x) and]** the Additional Limited Partner's Capital Commitment at the Bank's then current prime rate of interest plus two percent (2%), compounded daily, from the date(s) that such Additional Limited Partner would have contributed the component portions of such amount if it had been admitted at the Initial Closing. The Late Admission Charge shall be refunded by the Partnership to the preexisting Limited Partners in proportion to their Capital Commitments. Any Additional Limited Partner admitted after the Initial Closing shall not be entitled to any distributions relating to income accruing prior to their admission.

(ii) To the extent determined by the General Partner, an Additional Limited Partner shall, at the time of its admission to the Partnership, contribute less than the full amount specified in **Section 3.2(b)(i)** and shall, thereafter, contribute any remaining portion of such full amount, upon not less than ten (10) business days prior notice, at such times and in such amounts as the General Partner shall determine. The Late Admission Charge shall continue to accrue on amounts that remain uncontributed pursuant to the preceding clause.

(iii) In the case of an existing Limited Partner that, pursuant to **Section 3.1(b)**, increases its Capital Commitment after the Initial Closing, such Limited Partner shall be subject to the provisions of **Section 3.2(b)(i)** with respect to the amount of such increase as if newly admitted to the Partnership.

(iv) The General Partner may admit Additional Limited Partners or accept increased Capital Commitments from existing Limited Partners without regard to the terms and conditions set forth in **Section 3.1(b)** or without imposing the Late Admission Charge.

(c) *Capital Contributions by the General Partner.* The General Partner's capital contributions shall be paid at the same times and in the same proportions relative to its Capital Commitment as the capital contributions of the Limited Partners. The General Partner shall, at all times, have a Capital Contribution that is at least equal to ~~two and one-half percent (2.5%)~~ of the aggregate Capital Contributions of the Partners.

3.3 *Additional Capital Contributions.* Except as specifically provided in this **Section 3**, **Section 4.3(c)**, **Section 6.7(b)** or **Section ~~(8.3(e))~~ [8.4]**, no Person shall be permitted or required to make a contribution to the capital of the Partnership.

3.4 *Failure to Make Capital Contributions.*

(a) If a Limited Partner fails to make all or any portion of a capital contribution when due, except when such contribution is prohibited by applicable law, then it shall:

(i) Be deemed a "Defaulting Limited Partner"; and

the lesser of (i) $3,000,000 and (ii) five percent (5.0%)

ninety (90) days following receipt of such opinion to attempt to eliminate the necessity for such withdrawal to the reasonable satisfaction of the ERISA Limited Partner or Private Foundation Limited Partner, as applicable. In the event that such attempt is successful, the ERISA Limited Partner or Private Foundation Limited Partner, as applicable, shall not withdraw. In the event that such attempt is made in good faith, but is unsuccessful, the ERISA Limited Partner's withdrawal or Private Foundation Limited Partner's withdrawal, as applicable, shall not be effective prior to the Close of Business on the last day of the fiscal quarter in which such 90-day period ends.

3.7 *Loans to the Partnership.* No Partner shall be required to lend any money to the Partnership or to guaranty any Partnership indebtedness.

3.8 *Limitation of Liability; Return of Certain Distributions.*

(a) Except as otherwise required by applicable law or this **Section 3.8**, a Limited Partner shall have no personal liability for the debts and obligations of the Partnership and shall not be required to return any distributions received from the Partnership. Any obligation of an ERISA Limited Partner under this Agreement shall be enforceable solely against the assets of such ERISA Limited Partner and not against any trustee of such ERISA Limited Partner or other Person.

(b) A Limited Partner that receives a distribution (i) in violation of this Agreement or (ii) that is required to be returned to the Partnership under applicable law shall return such distribution immediately upon demand therefor by the General Partner. A Defaulting Limited Partner shall return within thirty (30) days after demand therefor by the General Partner any distribution the return of which is necessary or convenient to give effect to the provisions of **Section 3.4**. The General Partner may, in its sole and absolute discretion, cause the Partnership to elect to withhold from any distributions otherwise payable to a Partner amounts due to the Partnership from such Partner.

(c) Nothing in this **Section 3.8** shall be applied to release any Limited Partner from (i) its obligation to make capital contributions or other payments specifically required under this Agreement or (ii) its obligations pursuant to any relationship between the Partnership and such Limited Partner acting in a capacity other than as a Limited Partner (including, for example, as a borrower or independent contractor).

3.9 *Interest on Capital.* No Partner shall be entitled to interest on such Partner's Capital Contribution, Capital Account balance, or share of unallocated Profits.

SECTION 4

PROFITS AND LOSSES

4.1 *Allocations of Partnership Profits and Losses.*

(a) *General.* ~~Except as otherwise provided in this Section 4.1, the items of Profit or Loss of the Partnership for each fiscal quarter (or shorter period selected by the General Partner) shall be allocated as follows.~~

Rider 18A

(i) First, items of Profit and Loss attributable to Idle Funds Investments, Late Admission Charges or Partnership Expenses shall be allocated among the Partners in proportion to their respective Capital Contributions.

(ii) Next, all remaining unallocated items of Profit or Loss shall be allocated among the Partners:

(A) First, to the Partners in proportion to their respective Capital Contributions until they have received the Preferred Return (as defined in **Section 5.1(b)(i)(B)**);

(B) Second, to the General Partner until it has received an amount equal to twenty-five percent (25%) of the Preferred Return (the effect of which will be to achieve an allocation of cumulative profits between the Limited Partners and General Partner of eighty percent (80%) and twenty percent (20%), respectively); and

(C) Finally,

(1) eighty percent (80%) to all the Partners in proportion to their respective Capital Contributions; and

(2) twenty percent (20%) to the General Partner.

(b) *Excess Losses Otherwise Allocable to a Limited Partner*. To the extent that an item of Loss otherwise allocable to a Limited Partner under **Section 4.1(a)** would create a negative balance in the Capital Account of such Limited Partner (or increase the amount by which such Capital Account balance is negative), the item shall not be allocated to such Limited Partner but shall instead be specially allocated as follows:

(i) First, to the Partners as a group, to the extent possible in proportion to their respective Capital Commitments, until the Capital Account balance of each Limited Partner has been reduced to (but not less than) zero; and

(ii) Next, to the General Partner.

To the extent that there have been special allocations of Loss away from a Limited Partner under this **Section 4.1(b)** that have not subsequently been reversed pursuant to this sentence or **Section 4.1(h)**, the next available items of Profit otherwise allocable to such Limited Partner pursuant to **Section 4.1(a)** shall be specially allocated to the Partners to whom such items of Loss had been specialty allocated under this **Section 4.1(b)** so as to first offset in reverse order such special allocations of Loss.

(c) *Excess Losses Otherwise Allocable to the General Partner*. Subject to the prior application of **Section 4.1(b)**, to the extent that an item of Loss otherwise allocable to the General Partner under clause (ii)(B) of **Section 4.1(a)** would cause the aggregate Losses allocated to the General Partner under such clause to exceed the aggregate Profits allocated to the General Partner under such clause (in each case as determined for the entire period starting with the commencement of the Partnership and ending on the date of determination), the item shall be specially allocated as follows:

(i) First, to the Partners as a group, to the extent possible in proportion to their respective Capital Contributions, until the Capital Account balance of each Limited Partner has been reduced to (but not less than) zero; and

(ii) Next, to the General Partner.

To the extent that there have been unoffset special allocations of Loss away from the General Partner under this **Section 4.1(c)**, the next available items of Profit otherwise allocable to the General Partner under clause (ii)(B) of **Section 4.1(a)** shall be specially allocated to the Partners to whom such items of Loss had been specially allocated under this **Section 4.1(c)** (taking into account any adjustments to such special allocations pursuant to **Section 4.1(h)**) so as to first offset in reverse order such special allocations of Loss.

(d) *Special Allocations Attributable to Multiple Closings.* If Additional Limited Partners are admitted to the Partnership (or existing Partners increase their Capital Commitments) at a closing after the Initial Closing, allocations of Profit and Loss attributable to periods subsequent to such closing shall be adjusted by the General Partner as necessary to, as quickly as possible, cause the Capital Account balances of the Partners to reflect the same amounts that they would have reflected if all Partners had been admitted to the Partnership and made all of their Capital Commitments at the Initial Closing, had made capital contributions in respect of such Capital Commitments as and when due in accordance with **Section 3.2**, and had received allocations of Profit and Loss in accordance with the provisions of this **Section 4.1** (but taking into account as items of Profit any Late Admission Charges actually received by the Partnership). Nothing in the preceding sentence shall be deemed to override the application to a Defaulting Limited Partner of **Section 3.4**.

(e) *Book - Tax Accounting Disparities.* Solely for Federal income tax purposes, if Partnership property is reflected in the Capital Accounts of the Partners at a book value (*i.e.*, the property's basis for purposes of determining Profit and Loss with respect thereto as determined in accordance with the principles set forth in the definition of Profits and Losses in **Section 1**) that differs from the adjusted tax basis of such property, allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Partners in a manner which takes such difference into account in accordance with Section 704(c) of the Code and the Treasury Regulations issued thereunder.

(f) *Minimum Allocations to General Partner.* Notwithstanding anything in this Agreement to the contrary, the General Partner shall be allocated at least two and one-half percent (2.5%) of each item of Partnership income, gain, loss, expense or deduction.

(g) *Adjustment to Capital Accounts for Distributions of Property.* If property distributed in kind is reflected in the Capital Accounts of the Partners at a book value (*i.e.*, the property's basis for purposes of determining Profit and Loss with respect thereto as determined in accordance with the principles set forth in the definition of Profits and Losses in Section 1) that differs from the Fair Market Value of the property at the time of distribution, the difference shall be treated as Profit or Loss on the sale of the property and shall be allocated among the Partners, as of the time immediately prior to such distribution, in accordance with the provisions of this **Section 4.1**.

(h) *Reallocation of Certain Losses.* To the extent that: (i) Losses which otherwise would have been allocated to a Limited Partner under this **Section 4.1** were allocated to one or more other Partners under **Section 4.1(b)** or **4.1(c)** in consequence of such Limited Partner's Capital Account balance having been equal to, reduced to, or less than zero; (ii) such allocation has not been reversed pursuant to the subsequent operation of **Section 4. 1(b)** or **4.1(c)** or this **Section 4.1(h)**; and (iii) the Limited Partner thereafter returns a distributed amount pursuant to this Agreement or applicable law or otherwise makes a contribution to the capital of the Partnership, the Capital Accounts of the Partners shall be adjusted in connection with such return or contribution (to the extent of the value thereof) to effect a reallocation of such Losses to the Limited Partner.

(i) *Allocations in Event of Transfer.* If an interest in the Partnership is Transferred in accordance with this Agreement, allocations of Profits and Losses as between the transferor and transferee shall be made using the method, if any, that is agreed by the transferor and transferee and permitted under Section 706 of the Code, as determined by the General Partner in its reasonable discretion, and otherwise using any method selected by the General Partner and permitted under Section 706 of the Code.

(j) *Tax Allocations.* Taking into account the requirements of **Sections 4.1(e)** and **4.1(i)**, items of Partnership income, gain, loss, deduction or credit recognized for Federal income tax purposes shall be allocated among the Partners for Federal income tax purposes in a manner that is consistent with the requirements of the Code and the Treasury Regulations.

4.2 *Modifications to Preserve Underlying Economic Objectives.* In the event that (i) there is a change in the Federal income tax law, (ii) the Partnership borrows money or property on a nonrecourse basis, or (iii) the Partnership makes an election to adjust the basis of the Partnership's assets under Section 754 of the Code (it being acknowledged that the General Partner currently does not intend to make such an election), the General Partner, acting in its reasonable discretion after consultation with tax counsel to the Partnership, shall make the minimum modifications to the allocation provisions of this Agreement necessary to preserve the underlying economic objectives of the Partners as reflected in this Agreement and, in the case of such a borrowing or election, to properly allocate the tax items relating to such borrowing or election in accordance with the Code and the Treasury Regulations.

4.3 *Withholding/Special Taxes.*

(a) The Partnership shall withhold taxes from distributions to, and allocations among, the Partners to the extent required by law (as determined by the General Partner in its reasonable discretion). Except as otherwise provided in this **Section 4.3**, any amount so withheld by the Partnership with regard to a Partner shall be treated for purposes of this Agreement as an amount actually distributed to such Partner pursuant to **Section 5.1**. An amount shall be considered withheld by the Partnership if, and at the time, remitted to a governmental agency without regard to whether such remittance occurs at the same time as the distribution or allocation to which it relates; provided, however that an amount actually withheld from a specific distribution or designated by the General Partner as withheld from a specific allocation shall be treated as if distributed at the time such distribution or allocation occurs.

; provided, however, that no change adversely affecting the cash flows to Limited Partners may be made without the consent of each affected Limited Partner

Partnership's receipt of an in-kind payment, the General Partner may cause the Partnership to sell an appropriate portion of the property at issue and, to the extent permitted by applicable law (as determined by the General Partner in its reasonable discretion), any resulting income or gain shall be allocated solely for income tax purposes entirely to the Limited Partners in respect of whom such withholding obligation arises.

SECTION 5

DISTRIBUTIONS

5.1 *Operating Distributions.* Except as otherwise provided in this **Section 5**, distributions prior to the Dissolution of the Partnership shall be made in accordance with this **Section 5.1**. The General Partner may, in its sole and absolute discretion, elect to receive less than the full amount, or to defer receipt, of any distribution to which it is otherwise entitled. Except as otherwise provided in this Agreement, each Partner actually receiving amounts pursuant to a specific distribution by the Partnership shall receive a pro rata share of each item of cash or property of which such distribution is constituted (based upon such Partner's share under this Agreement of the total amount to be included in such distribution); provided, however, that the General Partner may vary the apportionment among the Partners of an in-kind distribution as necessary to avoid the distribution of fractional interests in Portfolio Company stock.

(a) *Tax Distributions.*

(i) The Partnership shall to the extent of available cash, distribute to each Partner, within ninety (90) days after the close of each Fiscal Year, an amount of cash equal to the sum of the following.

(A) The product of the Tax Percentage for such Fiscal Year and such Partner's allocated share of the Partnership's net long-term capital gain (as defined in Section 1222(7) of the Code) for such Fiscal Year as shown on the Partnership's Federal income tax return (subject to the modification described in **Section 5.1 (a)(iii)**); and

(B) The product of the Tax Percentage for such Fiscal Year and such Partner's allocated share of the Partnership's net ordinary income and net short-term capital gain (as defined in Section 1222(5) of the Code) for such Fiscal Year as shown on the Partnership's Federal income tax return (subject to the modification described in **Section 5.1(a)(iii)**).

(ii) For purposes of this **Section 5.1(a)**: (x) the "Tax Percentage" with respect to each specific item of net long-term capital gain shall be the highest blended Federal and State marginal income tax rate applicable to such specific item of net long-term capital gain recognized by an individual resident, or a corporation doing business, in the State ~~with the highest marginal individual or corporate income tax rate applicable to items of net long-term capital gain~~, and (y) the "Tax Percentage" with respect to items of net ordinary income and net short-term capital gain shall be the highest blended Federal and State marginal income tax rate applicable to ordinary income recognized by an individual resident, or a corporation doing business, in the State ~~with the highest marginal individual or corporate income tax rate applicable to items of ordinary income. In all cases, the highest marginal~~ of California

income tax rate shall be the highest statutory rate applicable to the specific type of income or gain in question and shall be determined without regard to phaseouts of deductions or similar adjustments; moreover, a corporate franchise tax imposed in lieu of an income tax shall be treated as an income tax. The General Partner, acting in its reasonable discretion, may adjust the determination of Tax Percentages pursuant to this **Section 5.1(a)(ii)**: (x) as necessary to ensure that the distribution required to be made to each Partner pursuant to **Section 5.1(a)(i)** for any Fiscal Year is not less than such Partner's actual Federal and State income tax liability in respect of allocations made to such Partner by the Partnership for such Fiscal Year; or (y) to reflect any city or other local income tax to which any Partner or Partners may be subject; provided, however, that the Tax Percentage with regard to a particular type of income or gain shall in all events be the same percentage for all Partners.

(iii) For purposes of calculating the Partnership's net income and gain under clause (i), above, there shall be disregarded any items of loss, expense or deduction (including items of Management Fee expense) the ultimate deductibility of which may, in respect of any Partner or equityholder of a Partner, be subject to limitation under Section 67 of the Code.

(iv) For purposes of determining whether the Partnership has satisfied its distribution obligation under **Section 5.1(a)(i)**, all cash distributions made during a Fiscal Year shall be treated as distributions made pursuant to **Section 5.1(a)(i)** in respect of such Fiscal Year (except to the extent that such distributions were required to satisfy the obligations of the Partnership under **Section 5.1(a)(i)** in respect of one or more prior Fiscal Years, in which case such distributions shall be treated as having been made pursuant to **Section 5.1(a)(i)** in respect of such prior Fiscal Year or Years).

(b) *Other Discretionary Distributions*. In addition to the distributions provided for in **Section 5.1(a)** and subject to **Section 5.1(c)**, in its discretion, the General Partner, prior to dissolution of the Partnership, shall distribute assets of the Partnership whether in cash, Marketable Securities or other property, as it may from time to time deem advisable, within a reasonable period following receipt thereof by the Partnership, subject to any reserves deemed appropriate by the General Partner; provided, however, that distributions shall only take the form of cash and Marketable Securities prior to the termination of the Partnership **[and provided further that after the Commitment Period the General Partner will distribute the proceeds from the sale of a Portfolio Security as soon as practicable after such sale]**. The General Partner shall not cause the Partnership to make operating distributions of non-Marketable Securities without the consent of the LP Advisory Committee.

(i) Distributions pursuant to this **Section 5.1(b)** shall be made as follows:

(A) First, distributions shall be made to the Partners pro rata in accordance with their respective Capital Contributions as a return of the Partners' Capital Contributions until all Capital Contributions have been returned.

(B) Second, distributions shall be made to the Partners until each Partner has, as of the date of the distribution, received distributions that equal a pre-tax internal rate of return on such Partner's Capital Contributions of ten percent (10%), based upon annual

compounding, a 360-day year of twelve (12), 30-day months, and no compounding within periods of less than one full year, (the "Preferred Return").

(C) Third, distributions shall be made to the General Partner, until the aggregate distributions to the General Partner equal twenty-five percent (25%) of the aggregate distributions to the Limited Partners under **Section 5.1(b)(i)(B)** (the effect of which will be to achieve an allocation of cumulative profits between the Limited Partners and General Partner of eighty percent (80%) and twenty percent (20%), respectively).

(D) Thereafter, distributions shall be made eighty percent (80%) to the Limited Partners pro rata in accordance with their respective Capital Contributions and twenty percent (20%) to the General Partner.

(ii) Portfolio Securities distributed pursuant to this **Section 5.1(b)** shall be subject to such conditions and restrictions as shall be determined by the General Partner to be required or appropriate under applicable law or contractual obligations to which the Partnership is subject.

(c) During the Commitment Period, the General Partner may retain net proceeds**[, up to a total of twenty percent (20%) of Capital Commitments,]** from the disposition of investments **[within twenty-four (24) months of the initial investment by the Partnership]** and may use such amounts either for reinvestment in Portfolio Companies **[(to the extent expressly permitted by this Agreement)]** or to meet Management Fees or other expense obligations of the Partnership, to the extent necessary to ensure that one hundred percent (100%) of the aggregate Capital Commitments of all Partners are available to invest in Portfolio Companies. Following the Commitment Period, such retained amounts, along with any unfunded Capital Commitments as of the end of the Commitment Period, may only be used ~~(to (i) make permitted follow on investments in Portfolio Companies, (ii) complete investments by the Partnership in transactions which were in the process of being completed prior to the Close of Business on the date that is the end of the Commitment Period, or (iii) to meet Management Fees or other expense obligations of the Partnership.)~~ **[as expressly permitted by Section 3.2(a).]**

5.2 *Liquidating Distributions.* Notwithstanding the provisions of **Section 5.1**, cash or property of the Partnership available for distribution upon the Dissolution of the Partnership (including cash or property received upon the sale or other disposition of assets in anticipation of or in connection with such Dissolution) shall be distributed in accordance with the provisions of **Section 8.3**.

5.3 *Limitation on Distributions.* No distribution shall be made to a Partner pursuant to **Section 5.1** if and to the extent that such distribution would: (i) cause the Partnership's liabilities, other than liabilities owed to Partners on account of their Partnership interests, to exceed the fair value of its assets, or (ii) cause the Partnership to cease to be a venture capital operating company within the meaning of Department of Labor Regulation 2510.3.101 or otherwise cause the assets of the Partnership to be "plan assets" under the Final Regulation, or (iii) cause the Partnership to be insolvent, or (iv) render the Partner liable for a return of such distribution under applicable law. Except with regard to distributions actually or (pursuant to **Section 5.1(a)(iv)**) deemed made to the General Partner pursuant to **Section 5.1(a)**, there shall be no distribution to a Partner if and to the

extent that such distribution would create a negative balance in the Updated Capital Account of such Partner or increase the amount by which such Updated Capital Account balance is negative.

5.4 *Special Distribution Procedures to Comply with Legal Requirements.*

(a) If, prior to the distribution of a Portfolio Security by the Partnership, a Limited Partner notifies the General Partner that receipt by the Limited Partner of such Portfolio Security would violate any law, regulation or governmental order applicable to the Limited Partner, or subject the Limited Partner to a foundation excise tax pursuant to Section 4943 of the Code or an excise tax on prohibited transactions under Section 4975 of the Code, the General Partner shall use its reasonable efforts to prevent a Partnership distribution of such Portfolio Security from giving rise to such violation or tax by (as determined by the General Partner in its sole and absolute discretion): (i) varying the method by which the Partnership distributes such Portfolio Security to the Limited Partner, or (ii) receiving such distributed Portfolio Security as agent for, selling such Portfolio Security on behalf of, and promptly delivering the Net Sales Proceeds therefrom to, the Limited Partner.

(b) At the election of a Limited Partner, all distributions of Portfolio Securities that otherwise would be made to the Limited Partner by the Partnership shall be made to the General Partner as agent for the Limited Partner. Immediately following a distribution to the General Partner pursuant to this **Section 5.4(b)**, the General Partner shall notify the Limited Partner of the type and quantity of Portfolio Securities distributed. The General Partner shall thereafter hold such Securities for a period of ten (10) business days (or such shorter period as is specified in a notice from the Limited Partner actually received by the General Partner), following which the General Partner shall use its reasonable efforts to promptly sell such Securities and deliver the Net Sales Proceeds therefrom to the Limited Partner; provided, however, that the General Partner shall not sell such Securities and shall instead promptly deliver such Securities to the Limited Partner following the conclusion of such 10-day period if, prior to the conclusion of such period, the General Partner is in actual receipt of notice from the Limited Partner that receipt of such Securities would not violate any law, regulation or governmental order applicable to the Limited Partner.

(c) A Limited Partner's election pursuant to **Section 5.4(b)** may be revoked by the Limited Partner at any time upon notice to the General Partner; provided, however, that an election may not be revoked with respect to Securities currently held by the General Partner as agent for the Limited Partner pursuant to **Section 5.4(b)**.

(d) At the election of the General Partner, all Portfolio Securities that otherwise would be distributed to the General Partner as agent for one or more Limited Partners pursuant to this **Section 5.4** shall not be so distributed, but shall instead be distributed to an independent escrow agent who shall perform all of the tasks in respect of such distributed Securities otherwise required to be performed by the General Partner pursuant to this **Section 5.4**.

(e) The foregoing provisions of this **Section 5.4** shall apply to all distributions made by the Partnership (including distributions pursuant to **Section 7.4** or **Section 8.3**); provided, however, that, in the case of distributions made pursuant to **Section 8.3**, the Liquidating Partner shall take the place of the General Partner.

SECTION 6

ADMINISTRATION

6.1 *Management Rights of the Limited Partners.* Except as specifically set forth in this Agreement or as required under applicable law, the Limited Partners shall take no part in the management, control or operation of the Partnership or its business and shall have no power or authority to act for the Partnership, bind the Partnership under agreements or arrangements with third parties, or vote on Partnership matters.

6.2 *Management by the General Partner.* Subject to the provisions and limitations of this Agreement and applicable law, and in accordance with the purpose of the Partnership as set forth in **Section 2.3**, the General Partner shall have the exclusive power and authority to perform acts associated with the management and control of the Partnership and its business including the power and authority to:

(a) Receive, buy, sell, exchange, trade and otherwise deal in and with Securities and other property of the Partnership;

(b) Acquire Securities on the basis of investment representations or subject to transfer restrictions;

(c) Subject to **Section 6.18**, borrow money or property on behalf of the Partnership, encumber Partnership property for the purpose of obtaining financing for the Partnership's business, and extend or modify any obligations of the Partnership; provided, however, that (i) the aggregate outstanding principal amount of Partnership indebtedness (including the amount of any guaranty extended by the Partnership, but excluding Partnership indebtedness incurred under **Section 4.3(c)**) together with all accrued but unpaid interest thereon shall not exceed ten percent (10%) of the Capital Commitments of the Partners as of the date of determination, and (ii) the Partnership shall not permit any of such borrowings (including any such guaranty but excluding Partnership indebtedness incurred under **Section 4.3(c)**) to remain outstanding for a period of more than sixty (60) days;

(d) Employ or retain any qualified Person to perform services on behalf of or provide advice to the Partnership and pay reasonable compensation therefor;

(e) Compromise, arbitrate or otherwise adjust claims in favor of or against the Partnership, and commence or defend litigation with respect to the Partnership or any assets of the Partnership, at the Partnership's expense;

(f) Cause the Partnership to purchase and maintain, at the Partnership's expense, insurance coverage reasonably satisfactory to the General Partner with regard to any circumstance or condition which may affect the Partnership (including any employee or agent thereof, the General Partner (or any member, employee or agent thereof in its capacity as such, or any Person in connection with service by such Person, at the request of the General Partner, as an officer or director of a Portfolio Company;

(i) Sell Securities to, or purchase Securities from, the Partnership;

(ii) Cause the Partnership to sell Securities to, or purchase Securities from, an Affiliate of the General Partner (including the Other Funds);

(iii) Cause the Partnership to sell Securities to, or purchase Securities from, a Portfolio Company in which any managing member of the General Partner has investments **(or other financial interests)** either directly or through the Other Funds;

(iv) Subject to the provisions of Section 6.5 and Section 6.6, engage in any activity that conflicts with the interests of the Partnership.

6.5 *Other Ventures and Activities.*

(a) The Limited Partners: (i) acknowledge that the General Partner, its Affiliates, equityholders, and other related Persons, including LP Advisory Committee members, and their respective clients are or may be involved in other financial, investment and professional activities, including: management of or participation in other investment funds; venture capital, private equity, public equity and real estate investing; purchases and sales of Securities; investment and management counseling; investment banking, underwriting and brokerage activities; leasing and lending activities; providing mergers and acquisitions, restructuring and other financial advisory services; and serving as officers, directors, advisors and agents of other companies; and (ii) agree that, except as otherwise specifically set forth in this Section 6.4(a) or Section 6.6, the General Partner, its Affiliates, equityholders, and other related Persons, and their respective clients may engage for their own accounts and for the accounts of others in any such ventures and activities ~~(without regard to whether the interests of such ventures and activities conflict with those of the Partnership)~~. Except as specifically set forth in this Section 6.4(a) or Section 6.6: (i) neither the Partnership nor any Limited Partner shall have any right by virtue of this Agreement or the existence of the Partnership in and to such ventures or activities or to the income or profits derived therefrom; and (ii) the General Partner, its Affiliates, equityholders, and other related Persons, and their respective clients shall have no duty or obligation to make any reports to the Limited Partners or the Partnership with respect to any such ventures or activities.

(b) ~~(Each)~~ **[Prior to the earlier of the end of the Commitment Period or the date the Partnership is Fully Invested, each of the managing members of the General Partner shall devote substantially all of their business time and effort to the operations and investments of the Partnership and, thereafter, each]** managing member of the General Partner shall devote to the Partnership such time and effort as is reasonably necessary to diligently manage the Partnership's business and affairs. In furtherance thereof, neither the General Partner nor a managing member of the General Partner shall form and operate any new investment fund (other than the Parallel Funds) as general partner, managing member or equivalent for the purpose of engaging in activities which are substantially similar to those engaged in by the Partnership ~~(and are focused on the same investment opportunities and types of securities targeted by the Partnership)~~, (i) without the consent of Two-Thirds-Interest of the Limited Partners, or (ii) before the date on which the Partnership is Fully Invested.

(c) The Limited Partners hereby acknowledge that the General Partner may be prohibited from taking action for the benefit of the Partnership due to confidential information acquired or obligations incurred: (i) in connection with an outside activity engaged in by the General Partner, its Affiliates, equityholders or other related Persons as permitted by Section 6.4(a); (ii) as a consequence of an equityholder, Affiliate or other related Person of the General Partner serving as an officer or director of a Portfolio Company; or (iii) in connection with activities undertaken by an equityholder, Affiliate or other related Person of the General Partner prior to the date first above written. No Person shall be liable to the Partnership or any Partner for any failure to act for the benefit of the Partnership as a consequence of a prohibition described in the preceding sentence.

6.6 *Policies with Respect to Investment Opportunities.*

(a) The Limited Partners recognize that decisions concerning investments and potential investments involve the exercise of judgement and the risk of loss.

(b) The General Partner shall apply its reasonable business judgement in determining when an investment opportunity meets the Partnership's investment criteria and whether it is in the best interests of the Partnership to take advantage of an investment opportunity (even if the opportunity otherwise satisfies such criteria).

(c) [**The General Partner and its affiliates shall offer to the Partnership any reasonably suitable business opportunities that are within the Partnership's business purpose.**] Notwithstanding any provision of this Agreement to the contrary, [**after the Partnership has invested such amount as the General Partner deems appropriate, or the General Partner has determined that the Partnership should not invest in the opportunity, or the General Partner has determined that there is an advantage to the Partnership by having another investor in the opportunity,**] the General Partner may elect, where the General Partner deems in its discretion that such an investment is appropriate, feasible and will not adversely affect the Partnership, to make available investment opportunities which come to its attention, in whole or in part, to one or more of the Partnership, the Partners, any Partner, the Other Funds, or any other Person or Persons (other than the Parallel Funds unless such partnerships are investing in parallel with the Partnership in compliance with this Agreement). The General Partner shall be under no obligation to allocate such opportunities equally among the Partners or at all.

(d) Any participation allocated to the Partnership in any investment in which the General Partner or any one or more of its equityholders participates need not be ~~on the same terms or~~ in amounts proportional to investments made by any of such Persons, but shall be subject to prior approval of the LP Advisory Committee.

(e) The Partnership and any Portfolio Company may enter into business relationships and transactions with members of the LP Advisory Committee and Affiliates thereof provided that the terms of such relationships and transactions are no less favorable to the Partnership or the Portfolio Company, as applicable, than terms available from unrelated third parties in comparable relationships and transactions.

shall not be on terms less favorable than, but

approval of the General Partner. The Partnership shall not reimburse any Partner for Partnership Expenses paid or incurred by such Partner unless the Partnership is provided with reasonable documentation relating thereto..

(e) Expenses, otherwise qualifying as Partnership Expenses, which are paid or incurred for the benefit of the Partnership as well as one or more Other Funds shall be allocated equitably among such entities by the General Partner in its reasonable discretion.

6.8 *Partner Compensation.*

(a) *General.* Except as otherwise provided in this **Section 6.8** or in **Section 6.16**, no Partner or Affiliate of a Partner shall be entitled to compensation for services provided by such Partner or Affiliate to, or for the benefit of, the Partnership.

(b) *Limited Partners.* A Limited Partner that, with the consent of the General Partner, performs services for the Partnership as an employee or independent contractor may receive such compensation as is agreed to by the General Partner (but not in excess of the fair market value of such services as determined by the General Partner in its reasonable discretion).

(c) *Management Fee.*

(i) *General.* Pursuant to **Section 6.7(b)** the Partnership shall cause each Limited Partner to pay to the ~~{General Partner}~~ **[Partnership]** throughout the term of the Partnership an annual "Management Fee~~{."}~~**[," which shall be payable to the General Partner.]** The Management Fee shall be payable semi-annually, in advance and pro rated on a daily basis (payable immediately) at any time that there is an increase in the aggregate Capital Commitments of the Partners. The first payment of Management Fee shall be made at the Initial Closing ~~{or at the earliest subsequent date upon which the Partnership has received sufficient capital contributions to fund such payment}~~.

will we have sufficient comfit at initial closing?

(ii) *Management Fee Rate.*

(A) The Management Fee rate initially shall be two and one-half percent (2.5%) of the aggregate Capital Commitments of the Limited Partners. Following the earlier of (1) the fifth anniversary of the Final Closing or (2) the funding of an Other Fund with commitments in an amount over fifty million dollars ($50,000,000), the annual Management Fee shall be reduced by one-quarter of a percentage point (.25) per year each full calendar year thereafter.

(B) In addition to the Management Fee otherwise payable to the General Partner under this **Section 6.8(c)**, the General Partner shall receive a special payment of Management Fee at the time of each admission of an Additional Limited Partner or increase in the Capital Commitment of an existing Partner. Such special payment shall be equal to the excess of (x) the Management Fee that would have been payable by the Partnership to the General Partner through the Close of Business on the date immediately preceding such admission or increase if such admission or increase had occurred at the Initial Closing, over (y) the actual Management Fee payable by the Partnership pursuant to **Section 6.8(c)(i)** through such time.

Compared 10046465.3/10185250.1

(iii) *Management Fee Offset.*

(A) In the event that the General Partner (or any member [or Affiliate] thereof) receives Fees Subject to Offset, Management Fees for the current year payable by the Partners to the General Partner shall be reduced by an aggregate amount equal to ~~eighty~~ percent (~~80~~%) of such Fees Subject to Offset (the "Management Fee Offset"). If the Fees Subject to Offset exceed the Management Fee for that year, ~~(one hundred)~~ [twenty] percent ~~((100%))~~[(20%)] of such excess fees shall be retained by the General Partner [and eighty percent (80%) of such excess fees shall be allocated to the Limited Partners]. For purposes of this Agreement, "Fees Subject to Offset" shall mean commitment, break-up, advisory, syndication, guarantee, directors, officers, management and other fees paid by a Portfolio Company that would not, if earned directly by the Partnership, cause the Partnership to cease to qualify as an "investment partnership" within the meaning of Section 731(c)(3)(C) of the Code. Fees Subject to Offset shall not include (i) director's fees received by a member of the General Partner from a company that has issued publicly traded stock to the extent that such director's fees do not exceed the fees paid by such company to outside directors generally or (ii) "carried interests" or "advisory fees" received by the General Partner or member of the General Partner in connection with an Other Fund. In each instance, the amount of Fees Subject to Offset deemed received by a Person shall be net of any expenses relating thereto (including expenses incurred by such Person in the process of earning such fees).

(B) To the extent that Fees Subject to Offset consist of assets other than cash or Marketable Securities, such Fees shall be deemed for purposes of this Section 6.8(c)(iii) to have been received at the earlier of: (x) the time that such assets are exchanged, or become freely exchangeable, for cash or Marketable Securities; (y) the time that such assets (to the extent consisting of non-Marketable Securities) become Marketable Securities through an effective registration, release of contractual transfer restriction, or similar process; and (z) the time that the General Partner elects for purposes of this Section 6.8(c)(iii) to be treated as having received such assets.

(C) To the extent that Fees Subject to Offset result in an offset obligation similar to the Management Fee Offset arising under this Section 6.8(c)(iii) in respect of one or more Other Funds, the aggregate offset obligation in respect of the Partnership and such Other Funds shall not exceed eighty percent (80%) of such fees and the benefit thereof shall be apportioned among the Partnership and such Other Funds by the General Partner on a reasonable basis, taking into account the respective committed capital of the Partnership and such Other Funds.

6.9 *Tax Matters Partner.*

(a) *General.* The General Partner is hereby designated the "Tax Matters Partner" of the Partnership within the meaning of Section 6231(a)(7) of the Code. Except to the extent specifically provided in the Code or the Treasury Regulations (or the laws of relevant non-Federal taxing jurisdictions) or this Section 6.9, the Tax Matters Partner in its sole and absolute discretion shall have exclusive authority to act for or on behalf of the Partnership with regard to tax matters, including the authority to make (or decline to make) any available tax elections. Notwithstanding

Partnership shall not be dissolved upon a Dissolution of the General Partner in connection with an acquisition or merger of the General Partner causing a Transfer of the General Partner's interest in the Partnership which has been approved by a Two-Thirds-Interest of the Limited Partners pursuant to Section ~~7.5~~;

(d) One hundred eighty (180) days following the **[voluntary withdrawal of any of Deepak Moorjani, Aymerik Renard or Michael Spindler as members of the General Partner (other than for natural personal exigencies such as death or disability of a family member) or the voluntary or involuntary]** withdrawal, retirement or termination of any two of Deepak Moorjani, Aymerik Renard or Michael Spindler as members of the General Partner or their death or Permanent Incapacity, unless within such one hundred eighty (180) day period a Majority-In-Interest of the Limited Partners elect to continue the Partnership;

(e) An election to dissolve the Partnership executed by the Limited Partners whose aggregate Capital Commitments at the time of determination equal or exceed ~~{eighty-}~~**[seventy-]**five percent ~~{(85%)}~~**[(75%)]** of the total Capital Commitments of all Limited Partners, at such time.

8.2 *Following Certain Dissolution Events.* Upon the occurrence of a Dissolution event described in **Section 8.1(c)** or **8.1(d)**, the Partners intend that such Person as the General Partner may have designated by notice to the Limited Partners shall promptly notify the Partners of a special meeting of the Partners to be held not less than twenty (20) nor more than sixty (60) days after the date of such event. In the event that the General Partner has not made such a designation or that such designee has not given such notice within twenty (20) days of the date of such a Dissolution event, then a Majority-In-Interest of the Limited Partners may notify the Partners of such meeting. At that meeting, the Partners may by unanimous vote (in person or by proxy) elect to continue the Partnership in accordance with the terms of this Agreement and appoint a new General Partner. If the Partners do not elect to continue the Partnership, a Liquidating Partner shall be elected by a Two-Thirds-Interest of the Limited Partners present (in person or by proxy) at the special meeting.

8.3 *Winding Up and Liquidation.*

(a) Except as provided in ~~{Section 8.4}~~ **[Section 8.5]**, upon Dissolution of the Partnership, the Liquidating Partner shall promptly wind up the affairs of, liquidate and Terminate the Partnership. In furtherance thereof, the Liquidating Partner shall: (i) have all of the administrative and management rights and powers of the General Partner (including the power to bind the Partnership); (ii) be reimbursed for Partnership Expenses it incurs; ~~and (iii) receive in compensation for its services to the Partnership a quarterly fee equal to one half percent (0.5%) of the Net Asset Value of the Partnership measured at and payable as of the first day of each calendar quarter during the period of winding-up and liquidation~~. Following Dissolution, the Partnership shall sell or otherwise dispose of assets determined by the Liquidating Partner to be unsuitable for distribution to the Partners, but shall engage in no other business activities except as may be necessary, in the reasonable discretion of the Liquidating Partner, to preserve the value of the Partnership's assets during the period of winding-up and liquidation. In any event, the Liquidating Partner shall use its reasonable best efforts to prevent the period of winding-up and liquidation of the Partnership from extending beyond the date which is two (2) years after the Partnership's date

Compared 10046465.3/10185250.1

of Dissolution. At the conclusion of the winding-up and liquidation of the Partnership, the Liquidating Partner shall: (i) designate one or more Persons to hold the books and records of the Partnership (and to make such books and records available to the Partners on a reasonable basis) for not less than six (6) years following the termination of the Partnership under the Act; and (ii) execute, file and record, as necessary, a certificate of termination or similar document to effect the termination of the Partnership under the Act and other applicable laws.

(b) Distributions to the Partners in liquidation may be made in cash or in kind, or partly in cash and partly in kind, as determined by the Liquidating Partner. Distributions in kind shall be valued at Fair Market Value as determined by the Liquidating Partner in accordance with the provisions of **Section 6.11** and shall be subject to such conditions and restrictions as may be necessary or advisable in the reasonable discretion of the Liquidating Partner to preserve the value of the property so distributed or to comply with applicable law.

(c) The Profits and Losses of the Partnership during the period of winding-up and liquidation shall be allocated among the Partners in accordance with the provisions of **Section 4.1**. If any property is to be distributed in kind, the Capital Accounts of the Partners shall be adjusted with regard to such property in accordance with the provisions of **Section 4.1(g)**.

(d) The assets of the Partnership (including proceeds from the sale or other disposition of any assets during the period of winding-up and liquidation) shall be applied as follows:

(i) First, to repay any indebtedness of the Partnership, whether to third parties or the Partners, in the order of priority required by law;

(ii) Next, to any reserves which the Liquidating Partner reasonably deems necessary for contingent or unforeseen liabilities or obligations of the Partnership (which reserves when they become unnecessary shall be distributed in accordance with the provisions of clause (iii), below); and

(iii) Next, to the Partners in ~~proportion to their respective positive Capital Account balances (after taking into account all adjustments to the Partners' Capital Accounts required under Section 8.3(c))~~ accordance with, and subject to, Section 5.1.

[8.4 ***Clawback.***

]~~(e)~~ If, after the allocation of all Profits and Losses of the Partnership pursuant to **Section 8.3(c)**, the Capital Account balance of the General Partner is less than zero, the General Partner shall, prior to the application and distribution of the Partnership's assets pursuant to **Section 8.3(d)**, contribute to the capital of the Partnership an amount of cash or property equal to the lesser of (x) the amount necessary to increase its Capital Account balance to zero, or (y) the aggregate Carried Interest Distributions less any amounts distributed to the General Partner under **Section 5.1(a)**. **[Deepak Moorjani, Aymerik Renard and Michael Spindler shall each be severally liable for such obligations of the General Partner, pro rata, based upon their respective participation in profits of the General Partner.]**

Compared 10046465.3/10185250.1

Upstart Capital is a Silicon Valley-based seed and early stage Internet venture capital fund. The principals of Upstart include Aymerik Renard (FranceTelecom's U.S. venture capitalist), Michael Spindler (former Apple CEO) and Deepak Moorjani (The Lodestar Group).

Upstart was launched in late 1999 with an investor base including Sumitomo Corporation, France Telecom, Societe Generale, the partners of two multi-billion dollar investment funds, Leo Hindery (CEO of Global Crossing), Bill Joy (founder of Sun Microsystems), and select Internet industry CEOs.

Upstart's advisory board includes Jean-Claude Latombe (Chair of the Stanford CS Department), Bill Pade (lead of McKinsey's Silicon Valley practice), Doug Solomon (Chief Strategy Officer of Palm Computer) and Leo Hindery.

Co-investors for our current projects include 3COM, Agilent Technologies, Benchmark Capital, Cisco Systems, Nortel Networks, Innovacom Venture Capital (France Telecom), Chase Capital, Fenway Partners, Moore Capital, and Vertex Management.

Upstart Capital LLC 100 Hamilton Palo Alto, Ca 94304

From: Michael SPINDLER <spind@wanadoo.fr>
To: Renard Aymerik <aymerik@upstartcap.com>, Moorjani Deepak <deepak@upstartcap.com>
Date: Monday, May 22, 2000 3:07 PM
Subject: Greenspan et all

General

Let me begin with a little anecdote (as usual). In 1972, when I was a sales guy at DEC, I visited a lab at MIT. The guy there was into robotics. Since I covered the university and R&D market for DEC in Germany at that time, I showed some interest in his application since I had a similar project going on at one of my university accounts. It turned out that the MIT had four times as much computer resources for the exact same task than the guy in Germany, An event which- for the first time - told me how computer and technology crazy the US is.

Another example: look at the Russian vs the American base rocket technology.. For a long time the Russian launched much larger payloads with a much simpler yet powerful rocket booster technology.

Long before the Internet became "popular" we did real networking in Europe . Probably more so than in the US. Yes they didn't invent Ethernet et al , but the packet switching technology was invented there and things like the 1977 TRANSPAC in France became the underpinnings to Minitel , the forerunner to current popular US Internet

The PC Lan technology in the 80's was equally used in Europe and the US. In that space 3COM ironically had a much larger business in Europe than in the US. The experimentation with hypertext and language was equally pronounced in Europe and the US. The difference towards today's Internet was that the university environment in Europe further developed real networking (CERN laid the ground for the www) while the University of Michigan fiddled with Mosaic, the forerunner of the browsers as we became to know them. From that point onwards the US accelerated in the commercialization of Netscape's browser and the appearance of web app development tools. The kids jumped on the bandwagon developing stuff they liked "for themselves" pretty much like the original Macintosh stuff. It wasn't all useful but hugely "popular". So history repeated itself again: the same excessive behavior pushing technology at all cost and risks without any holistic view on what and how much makes sense and where it is headed. Result : huge redundancies (e.g. 50 petstores on -line) and inefficiencies.Now the shit hits the fan .The same guys (Wall Street, pundits , media) who pushed it up (and benefited nicely) now are pushing it down. Isn't it ironic to see massive layoffs in this "new economy"?

The rattling of the stock market has profound long term impact. Look at the telecom stocks! Besides dismal performances of France Telecom, BT and AT&T , most of building of infrastructure is done with debt financing. So if Greenspan raises interest rates further, they get knocked down further. The secondary players and suppliers get knocked down in that spiral because their growth is questioned. I always questioned Cisco's model to debt finance with a growing stock stock. Very little dilution . But that game is

over I guess and their acquisition spree is slowing (SAN Valley??) I guess the infrastructre players (optical, wireless et al) are all affected , so are the builders of the land and space. It ripples down all the way to the enablers and application layers.

Investment strategy for Upstart

I guess Aymerik's tactics for Innovacom - more by default of the policy- worked out and paid out. But largely due to the FT pedigree label he could bring to the party. We don't have that luxury with Upstart. So while I like to put a smaller amount leveraged over a larger number of players , I doubt whether we get invited much at that level. I agree that the original edict of " being the lead" may have to move over because of necessity.
We are in the deals we have with larger amounts. But that's water under the bridge. I suppose we can find co-investors for future rounds in SAN VALLEY, VOCALOCA and NETACTIVE . I am not at all certain we can do this with Z-Market. We may have jumped at this too early because we wanted a B2B deal. 20/20 hindsight! Investing in European guys is alright- I just believe that is easier with people from the west (Fotowire) than from the east (z-Market)

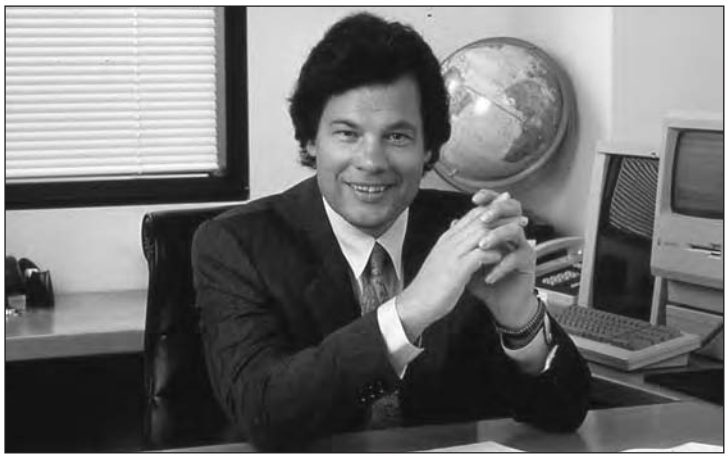
Michael

P.S. I will check off the e-mail starting tomorrow morning (local time). You guys can reach me on my portable at 011-33-661847765 it's on all the time!!!!

From Diesel to Doctor

Although Michael H. Spindler joined Apple in September 1980 as marketing manager for European operations, the native of Berlin, Germany, didn't pop up on the radar screens of most Apple watchers until January 29, 1990, when he moved to Cupertino to assume the role of chief operating officer, taking over the worldwide manufacturing and marketing units that had previously reported to Jean-Louis Gassée. Nicknamed "The Diesel" because of his ability to attack complex problems head-on with no-nonsense management experience, Spindler was chugging down a career path that would take him to the highest executive office at Apple. In stark contrast to Steve Jobs and John Sculley, Spindler is a passionately private man who, according to one former executive, "did not get where he is by showing his butt in public." As a result, most people would be hard pressed to recall a single thing he accomplished while at the helm of Apple. That's a shame, because had he achieved his ultimate goal, its effect would have been more profound than anything anyone else at Apple had ever accomplished: The firm would have ceased to exist.

"I'm a Mike Spindler fan. In my personal opinion, he's clearly CEO material, and maybe the board brought him in for that."
***Jean-Louis Gassée**, upon announcing his intention to leave Apple*
(San Jose Mercury News, March 3, 1990)



Almost since the moment he arrived in Cupertino, Michael Spindler tried to merge Apple with a variety of different corporations.

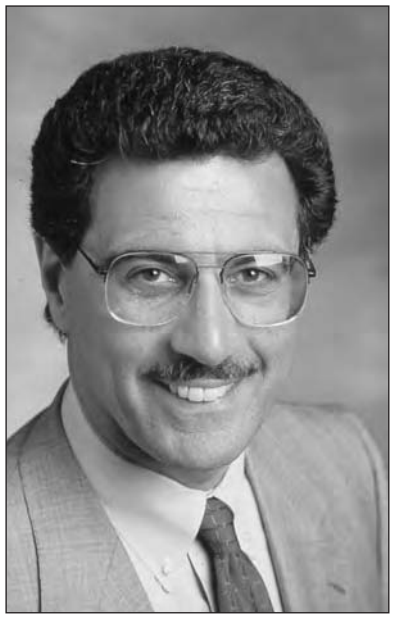
"We used to have a joke that you don't sit in the first ten rows at a Spindler speech, because you might drown from all the sweat and spit."
*Apple sales manager **John Ziel***

Upon arriving in Cupertino, Spindler was instructed by CEO Sculley to begin a secret search for a way to pair Apple's brand name and superior software with the market muscle and boardroom credibility of a larger company. Sculley felt that the Mac market would slowly erode and that Apple's only hope was to create new revenue streams from products such as the Newton personal digital assistant and Pippin set-top box, but developing these products to the point of self-sufficiency would require the resources of a larger company.

"This isn't anything new. Since 1986, we held serious discussions with DEC, Kodak, Sony, Sun, Compaq, IBM, and a few other companies I'd rather not name now. They were very thoughtful discussions. We considered everything from 'Let's trade technology' to 'Let's put the companies together' with each one of them."
*Chairman **Mike Markkula**, on 1996 merger speculation*

In 1989, Joseph A. Graziano was nicknamed "The Million Dollar Man" after Apple paid him a $1.5 million signing bonus to leave Sun Microsystems, where he had been CFO for two years. He had been Apple's CFO from 1981 to 1985, at which time he quit to spend time with his brother, Anthony, who was dying of cancer. When word of the signing bonus spread around Apple, employees began computing budgets and profits in a new unit of currency called the Graz. For example, if your budget got cut by $6 million, you'd say they slashed "four Grazs."

Tom Zimberoff



CFO Graziano resigned after failing to convince the board to break up Apple.

investigated during his final days in charge), claiming it was the only way Apple could survive. He laid the blame for Apple's ills at Spindler's feet. He argued that Spindler's new forecast of 30 percent Mac unit growth was unrealistic in the face of the Windows 95 tidal wave. Spindler was still half-heartedly entertaining offers where he could find them but seemed resigned to trying to service the remaining Mac market as an independent company. Spindler fought back and the board stood behind him. As Markkula told *The Wall Street Journal*, "The board has been very pleased with Michael's performance. He is the best thinker at Apple. He is truly a very brilliant man." Frustrated and disgusted at the board "sitting there with their thumbs up their asses," Graziano resigned.

By December 1995, a shared fear of Microsoft had driven Sun Microsystems' CEO McNealy to meet with Apple's board at the St. Regis Hotel in New York, where they began nailing down the details of a stock-swap deal that would place McNealy in charge of the combined company. Ironically, five years before, Apple had walked away from a deal to acquire Sun, and now the tables were turned, with the spurned McNealy on the verge of taking over Apple. It looked like Apple might be able to put a present under its shareholders' Christmas trees after all, but negotiations broke off when Apple warned of an impending $69 million quarterly loss.

The Sun deal may have slipped away, but there was still the possibility that Philips would come through. Talks with Philips had been running concurrently with the Sun negotiations, and the Dutch company had indicated a willingness to pay $36 a share. However, those hopes were dashed when Philips' board rejected the proposal by a single vote.

During the merger speculation surrounding Apple at the end of 1995, there was a very real possibility of the prodigal son returning to Cupertino. At the *Upside* Technology Summit held in Carefree, Arizona, on February 12, 1996, Oracle CEO Lawrence J. Ellison admitted that he and his best friend, Steve Jobs, contemplated making a bid for the company while the two were vacationing in Hawaii the previous December. "Steve and I talked about it at length," revealed Ellison. "Up to a week ago, we were seriously looking at buying Apple, but Steve and I couldn't exactly agree about the

Sun microsystems

"I've been to China and to the former Soviet Union, and I've seen what controlled economies are like. They suck. If Microsoft dominates the computer industry the way Bill [Gates] would like, our industry would suck too."
Sun CEO ***Scott McNealy***
*(*Fortune*, February 19, 1996)*

Q. What do you get when you merge Sun and Apple?
A. Snapple.

In an email circulated company-wide upon his resignation, Spindler wrote:

> So it's time for me to go! Mistakes or misjudgments made? Oh yes—even plenty. Both in business and personal judgment terms. I take personal responsibility for things that didn't work and should have worked. I tried to give it my best—both intellectually and physically in every corner of the world to carry this cause and its color. I tried to be as clear, honest and forthcoming in my communication with you. Those of you who—through all these long years—have helped me, supported me and even guided me—I thank you sincerely from the bottom of my soul for the friendship and being together. In fading away from the place which I loved and feared, I will become whole again—hopefully renew the father, husband and self I am.

Since leaving Apple, Spindler has kept a low public profile. He sits on the supervisory board of German publishing conglomerate Bertelsmann AG (www.bertelsmann.de) and is a managing partner at Upstart Capital (www.upstartcap.com). Apple, meanwhile, survived the most trying period in its history and—as of this writing—remains a thriving independent company.

Michael Spindler, former Apple CEO, our June Luncheon Speaker

"Nations or Networks? A view from above."

This theme encapsulates a variety of topics such as the Internet, competitiveness, and South East Asia

Michael Spindler

Michael Spindler was born in Berlin, Germany and holds a B.S. in Electrical Engineering from Technical University in Cologne. He has worked his entire career in the computer and electronics field. His first assignment in 1966 was as a development engineer in the central laboratories at Siemens AG in Munich, Germany, working on a magnetic tape controller for mainframe computers. Wanting to get closer to a real customer he joined a subsidiary of electronics conglomerate Schlumberger in the UK involved in telemetry and radar systems as a customer support engineer.

Realizing the writing on the wall and the potential of minicomputers he joined Digital Equipment Corp in 1970 as salesman in their Munich office, moving on to marketing and product management. By 1977 he had European responsibility for the telecom industry.
That year he answered a call from Intel Corp and became European Marketing Manager based at their European HQ in Brussels.
In 1980 he joined Apple, Inc as European Manager based in Paris, France. In 1985 he took responsibility for Apple's International business based in Cupertino, CA. He became President & COO in 1990 and President & CEO three years later. He left Apple in 1996.

Following corporate life Michael Spindler set out in a variety of broader activities. He served on the Boards of German Carmaker Daimler-Benz and media conglomerate Bertelsmann AG as well as firms in the biomedical and medical device business. He became involved in venture capitalism and joined Upstart Capital LLC. He served as a Trustee in non profit organizations such as the American Film Institute in Los Angeles and Libraries for the Future in New York.

Michael Spindler is married and lives in San Francisco. His three children Karen, Laurie and John live in the Bay Area.